

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte KENT H. FORSLAND

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Appeal No. 1999-0611  
Application No. 08/814,272<sup>1</sup>

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ON BRIEF

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Before ABRAMS, STAAB and BAHR, Administrative Patent Judges.  
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 30, which are all of the claims pending in this application. Claims 5, 12, 15, 19, 24 and 27 were amended after the final rejection in Paper No. 10.

We AFFIRM.

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<sup>1</sup> Application for patent filed March 10, 1997. According to the appellant, this application is a continuation-in-part of Application No. 08/601,777, filed February 15, 1996, now abandoned, Application No. 29/040,278, filed June 14, 1995, now U.S. Pat. No. D 378,421, and Application No. 29/055,656, filed June 10, 1996, now U.S. Pat. No. D 397,447.

BACKGROUND

The appellant's invention relates to a closure, such as a roll-up garage door, having a facade of at least one upright door. An understanding of the invention can be derived from a reading of exemplary claims 1, 14 and 28, which appear in the appendix to the appellant's brief.<sup>2</sup>

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Norberg 1937	2,093,020	Sep. 14,
Fimbell 1991	5,060,711	Oct. 29,
Schlicht et al. (Schlicht) 1992	5,123,211	Jun. 23,
Lewis et al. (Lewis) 1997	5,626,176	May 6,

The following rejections are before us for review.<sup>3</sup>

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<sup>2</sup> The copy of claim 29 in the appendix to the appellant's brief contains a minor error in that the claim of record, in line 3, reads "upwardly" instead of "outwardly."

<sup>3</sup> The examiner's inclusion of claim 24 in rejections 1 through 3, rather than in rejection 6, and claim 29 in rejection 3 in addition to rejection 6, appears to have been an inadvertent error, in light of the record as a whole. Accordingly, in deciding the appeal as to claims 24 and 29, we shall interpret the rejections thereof as being under 35 U.S.C. § 103 as unpatentable over Lewis and not under 35 U.S.C. § 102. The appellant does not appear to be prejudiced by this interpretation in light of the appellant's grouping of claims 24 and 29 with claims 11, 13 and 26 (brief, page 5) and argument as to the non-obviousness of these claims under 35 U.S.C. § 103 (brief, pages 9 and

1. Claims 1 to 3, 7 to 10, 12, 14 to 16, 20 to 23, 25, 27, 28 and 30 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Fimbell.

2. Claims 1 to 3, 7 to 10, 12, 14 to 16, 20 to 23, 25, 27, 28 and 30 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Norberg.

3. Claims 1 to 3, 7 to 10, 12, 14 to 16, 20 to 23, 25, 27, 28 and 30 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Lewis.<sup>4</sup>

4. Claims 4 and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Fimbell.

5. Claims 4 and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Norberg.

6. Claims 4, 11, 13, 17, 24, 26 and 29 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lewis.

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10).

<sup>4</sup> Viewing the record as a whole, it is apparent to us that the examiner's omission of claim 16 in this rejection was an inadvertent error. Accordingly, in deciding this appeal, we shall consider claim 16 to be included in this rejection. The appellant is not prejudiced by this treatment since the brief addresses claim 16 with regard to this rejection in the status of claims, issues and arguments sections (pages 2, 5 and 11).

7. Claims 5, 6, 18 and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lewis in view of Schlicht.

8. Claims 5, 6, 18 and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Norberg in view of Schlicht.

9. Claims 5, 6, 18 and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Fimbell in view of Schlicht.

The complete text of the examiner's rejections and response to the argument presented by the appellant appears in the final rejection (Paper No. 8) and the examiner's answer (Paper No. 13), while the complete statement of the appellant's argument can be found in the brief (Paper No. 12).

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

#### The Norberg and Fimbell Rejections

Turning first to rejections 1 and 2, we note that independent claims 1 and 28 both require that the closure have

a "front facade of a plurality of upright doors." While we do agree with the examiner that "doors have numerous and vastly different appearances" (answer, page 4), we find that a "facade of a plurality of upright doors" requires an exterior that appears to the viewer as a plurality of distinct recognizable upright doors. From our viewpoint, the front surfaces of the garage doors disclosed by Fimbell (see Figure 1) and Norberg (see Figure 1) do not present such an appearance. While it is possible for one to carve out portions of the exterior of the garage door of either Fimbell or Norberg and designate them as doors, neither garage door appears to the viewer as a plurality of distinct recognizable upright doors.

With regard to independent claim 14, which requires "frame means having at least one opening for exposing a portion of the front wall, said one opening exposes portion of the front wall having an upright door facade," the panels of the garage door of Fimbell do comprise lower rails (16), upper rails (18), end stiles (20) and mullions (22) which define openings exposing the front surfaces of composite panes (24). However, the front surface of a composite pane (24) does not,

in our opinion, have an "upright door facade" as required by the claim. Similarly, the Norberg garage door comprises a rectangular grid-like pattern of frame members (unnumbered) projected outwardly from the recessed portions of panels (10, 12, 14, 16), as seen in Figure 1. However, none of the recessed panel portions exposed by the openings formed by the frame members has "an upright door facade" as required by claim 14.

For the above reasons, we shall not sustain the examiner's rejection of independent claims 1, 14 and 28, or of claims 2, 3, 7 to 10, 12, 15, 16, 20 to 23, 25, 27 and 30 which depend therefrom, under 35 U.S.C. § 102(b) as being anticipated by Fimbell or Norberg.

With regard to rejections 4 and 5, the examiner has not asserted any reason why one of ordinary skill in the art would have modified the Fimbell or Norberg door to present a facade of a plurality of upright doors to arrive at the invention of claims 1 and 28 or to provide a frame means having an opening exposing a portion of the front wall of the garage door having a facade of an upright door to arrive at the invention of claim 14. It follows then that we likewise cannot sustain the

examiner's rejections of claims 4 and 17 under 35 U.S.C. § 103 as being unpatentable over either Fimbell or Norberg.

Further, with regard to rejections 8 and 9, we have reviewed the teachings of Schlicht but find nothing therein which overcomes the above-noted deficiencies of Fimbell and Norberg. Accordingly, we likewise cannot sustain the examiner's rejections of claims 5, 6, 18 and 19 under 35 U.S.C. § 103 as being unpatentable over Fimbell or Norberg in view of Schlicht.

#### The Lewis Rejections

With regard to rejection 3, the appellant states on page 5 of the brief that claims 1 to 3, 10, 12, 14 to 16, 23, 25, 28 and 30 stand or fall together and claims 7 to 9, 20 to 22 and 27 stand or fall together. Therefore, in accordance with 37 CFR § 1.192(c)(7), we have selected claims 1 and 7 as the representative claims from these groupings on which to decide the appeal of this rejection.

Lewis (Figures 5D and 5E) discloses an overhead door, such as a garage door, comprising a plurality of horizontally extending panels (170, 172, 174) pivotally connected to each other by a flexible hinge (92), best seen in Figure 3. Each

of the panels comprises a pattern (176 to 186) formed by raised mullions. From our viewpoint, the upright rectangular patterns formed by the raised mullions and the portions of the panels exposed within the patterns give the overhead door shown in either Figure 5D or Figure 5E a facade of three upright doors. Therefore, we do not agree with the appellant that "[t]he door configurations of [Lewis] do not show a front facade of a plurality of upright doors," as argued by the appellant on page 11 of the brief.

Accordingly, we shall sustain the examiner's rejection of claim 1, and of claims 2, 3, 10, 12, 14 to 16, 23, 25, 28 and 30 which stand or fall therewith, under 35 U.S.C. § 102(e).

As to claim 7, each panel of the Lewis door comprises an outer skin (54) forming the front face of the panel. The appellant's only argument with regard to the separate patentability of claims 7 to 9, 20 to 22 and 27 is that Lewis does not have "adjacent panels having sheet members that overlap any panel structure" (brief, page 11). This is not found persuasive as it is not commensurate in scope with claim 7, which merely requires that the front wall of each panel include sheet members. Moreover, we note that each panel



comprises a D-shaped male joint member (104) attached at the top edge thereof which engages a female joint member (58) disposed at the bottom of the adjacent panel. As best seen in Figure 2, when the overhead door is in the closed position, with adjacent panels lying in the same plane, the skin (54) of an upper panel has a bottom portion which overlaps the joint member (104) of the next adjacent panel.

For the above reasons, we shall also sustain the examiner's rejection of claim 7, and claims 8, 9, 20 to 22 and 27 which stand or fall therewith, under 35 U.S.C. § 102(e) as being anticipated by Lewis.

With regard to rejection 6, the appellant states on page 5 of the brief that claims 4 and 17 stand or fall together and claims 11, 13, 24, 26 and 29 stand or fall together. Therefore, and in accordance with 37 CFR § 1.192(c)(7), we have selected claims 17 and 13 as the representative claims to decide the appeal of this rejection as to these two groups of claims.

The appellant argues that Lewis does not disclose a top frame member having a lower edge with an arched configuration (page 9). The examiner asserts that the provision of arches

on the Lewis door panels would have been obvious "so as to improve aesthetics" (final rejection, page 3). We agree with the examiner.

Initially, we note that a change in the shape of the upper member of the frame of the garage door in this case is merely an ornamental or aesthetic design consideration having no mechanical function or consequence whatever and thus cannot be relied upon for patentability of a claim in an application for patent under 35 U.S.C. § 103. See In re Seid, 161 F.2d 229, 231, 73 USPQ 431, 433 (CCPA 1947). Moreover, although Lewis does not illustrate any patterns on the overhead door designs shown in Figures 5D and 5E having arched configurations, Lewis does teach (see Figures 6A through 6C) the use of patterns having arched configurations. Further, Lewis suggests (column 1, lines 37 to 55 and column 2, lines 61 to 65) mixing, matching and flipping door panels provided with different design patterns to provide the garage doors with different aesthetic looks. In view of the teachings of Lewis, it would have been obvious to provide the top panel of the garage door shown in Figure 5D or Figure 5E with a panel

having an arch-shaped pattern to give the garage door a different "aesthetic" look. From our viewpoint, such an arch-shaped pattern would comprise a top frame member having a lower edge with an upwardly arched shape, as required by claim 17.

Accordingly, we shall sustain the examiner's rejection of claims 4 and 17 under 35 U.S.C. § 103 as being unpatentable over Lewis.

With regard to claim 13, the examiner implicitly concedes that Lewis does not disclose the upright members of the design patterns (176 to 186) having "upwardly and inwardly directed beveled top ends." However, the examiner contends that the provision of mullions or moldings having beveled surfaces would have been obvious "to improve aesthetics" (final rejection, page 3). Further, the examiner asserts on page 6 of the answer that "most mullions" are beveled and the appellant has not challenged this assertion. Accordingly, we shall accept the examiner's position that mullions having beveled edges are very common and find that such mullions would thus have commended themselves to one of ordinary skill

in the art designing door panels of the type disclosed by Lewis.

For the above reasons, we shall sustain the examiner's rejection of claim 13, and of claims 11, 24, 26 and 29 which stand or fall therewith, under 35 U.S.C. § 103 as being unpatentable over Lewis.

Turning finally to rejection 7, the appellant states that claims 5, 6, 18 and 19 stand or fall together (brief, page 5). Therefore, and in accordance with 37 CFR § 1.192(c)(7), we have selected claim 18 as the representative claim to decide the appeal of this rejection.

We agree with the examiner's position that it would have been obvious to provide arched windows on the Lewis garage door in view of the teachings of Schlicht. Schlicht teaches "[l]ites are conventionally provided in exterior doors to admit [light] and to allow the persons within the building to observe the exterior" (column 1, lines 9 to 11). Schlicht further teaches that complex decorative configurations for the "lites" are frequently desirable (column 1, lines 16 to 20). To achieve these objectives in a manner that does not require formation of complex recesses in the door, Schlicht discloses

a "lite" assembly (16) comprising a rectangular frame (18) in which a decorative trim panel (22) provided with pie-shaped apertures (48) is inserted against a transparent glazing panel (20). Schlicht teaches insertion of these "lite" assemblies into rectangular recesses in the top door panel (14) of a garage door, as seen in Figure 1. Thus, Schlicht provides ample suggestion to one of ordinary skill in the art to have provided such "lite" assembly inserts in the top panel of the Lewis garage door to provide a decorative means for admitting light into the garage and permitting persons within the garage to view the exterior of the garage. Further, we find that it would have been obvious to one of ordinary skill in the art to position such inserts so that the vertical framing elements (19) of the rectangular frame (18) are in alignment with the mullion patterns of the Lewis door panels in order to achieve an aesthetically pleasing effect. Contrary to the appellant's argument on page 9 of the brief, we find that the decorative panel (22) taught by Schlicht is indeed a top member of a frame means, which also includes the vertical framing elements (19) of the rectangular frame (18) of the insert and the vertical mullions. Further, the decorative panel has lower

edges having an upwardly arched shape complementary to the apertures (48) which form the windows.

For the foregoing reasons, we shall sustain the examiner's rejection of claim 18, and of claims 5, 6 and 19 which stand or fall therewith, under 35 U.S.C. § 103 as being unpatentable over Lewis in view of Schlicht et al.

#### CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 3, 7 to 10, 12, 14 to 16, 20 to 23, 25, 27, 28 and 30 under 35 U.S.C. § 102(b) as being anticipated by Fimbell or Norberg, claims 4 and 17 under 35 U.S.C. § 103 as being unpatentable over Fimbell or Norberg and claims 5, 6, 18 and 19 under 35 U.S.C. § 103 as being unpatentable over Fimbell or Norberg in view of Schlicht is reversed. However, the decision of the examiner to reject claims 1 to 3, 7 to 10, 12, 14 to 16, 20 to 23, 25, 27, 28 and 30 under 35 U.S.C. § 102(e) as being anticipated by Lewis, claims 4, 11, 13, 17, 24, 26 and 29 under 35 U.S.C. § 103 as being unpatentable over Lewis and claims 5, 6, 18 and 19 under 35 U.S.C. § 103 as being unpatentable over Lewis in view of Schlicht is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

NEAL E. ABRAMS	)	
Administrative Patent Judge	)	
	)	
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	)	
	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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	)	
	)	
JENNIFER D. BAHR	)	
Administrative Patent Judge	)	

JDB/pgg

Richard O. Bartz

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1300 Foshay Tower  
Minneapolis, MN 55402